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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHAEL E. ANDERER,)	
)	
Plaintiff,)	
)	
vs.)	
)	
C2 SYSTEMS, LLC., a Delaware limited)	OBJECTION TO PROPOSED
liability company; JOHN RUDD; STEPHEN)	ORDER ON MOTION TO REMAND
A. BRYANT; KENDALL BRYANT; SUN)	
TRUST BANKS, INC., DBA SUN TRUST)	
BANK, ATLANTA; JP MORGAN CHASE)	
BANK, N.A., a national bank; CLAYTON B.)	
MCCULLOUGH; PRATT-THOMAS)	Case No. 2:09-cv-00077-DB
WALKER, P.A.)	
)	Judge Dee Benson
Defendants.)	

Defendants Clayton B. McCullough and Pratt-Thomas Walker, P. A. (hereinafter "Pratt-Thomas") object to plaintiff's proposed Order on Motion to Remand and for the Just Costs and Any Actual Expenses Including Attorney Fees, Incurred as the Result of Removal. It appears the plaintiff's proposed Order would include an award of costs, expenses and attorney fees

against all named defendants, including Pratt-Thomas.

Pratt-Thomas has appeared specially in this case by way of Motion to Dismiss for Lack of Personal Jurisdiction. In making this Objection, Pratt-Thomas maintains their special appearance.

Pratt-Thomas objects to that portion of paragraph 1 of the proposed Order awarding costs and expenses, including attorney fees, incurred as a result of the removal, and all of paragraph 3 of the proposed order ordering plaintiff to submit an affidavit of attorney's fees, costs and expenses for review by the parties and counsel and response and for further hearing by the Court concerning an award of fees and costs under 28 U.S.C § 1447(c).

Pratt-Thomas' objection to the above-referenced portions of plaintiff's proposed Order is based on the following grounds:

1. 28 U.S.C. § 1447(c), the statute upon which plaintiff bases his claim for an award of costs, expenses, and attorney's fees, states, in pertinent part:

An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. [emphasis added].

The statute does not mandate an award of costs, expenses and attorney fees, but makes it discretionary with the Court. Since it is discretionary, plaintiff cannot assume that the Court exercised that discretion in his favor absent some specific ruling by the Court that included such an award of expenses, costs and fees.

In Baldwin v. Fresenius Medical Care, 2007 U.S. Dist. Lexis 46018(D. Utah 2007), the Court granted a Motion to Remand, but denied a request for costs, expenses and fees. The

Court stated:

Lastly, section 1447(c) provides that “[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” Although the court granted Baldwin’s motion to remand, this statute does not require a grant of attorney fees as a matter of course. [citing Martin v. Franklin Capital Corp., 546 U.S. 132, 126 S. Ct. 704, 709, 163 L.Ed. 2d 547 (2005)]. Courts should award attorney fees under this statute “only where the removing party lacked an objectively reasonable basis for seeking removal.” [citing Id.] The court finds that Fresenius had an objectively reasonable basis for seeking removal and, therefore, declines to make an award of attorney fees in this case.

Thus, unless this Court specifically concluded that there was no objectively reasonable basis for seeking removal, there can be no award of fees, costs and expenses.

2. A review of the transcript of the May 15, 2009, Motion to Remand hearing indicates there was no discussion of an award of costs, expenses and fees by any of the counsel, or by the Court in the Court’s ruling granting the Motion to Remand. The Court did not find that there was no objectively reasonable basis for removal, as required in Martin v. Franklin Capital Corp., supra. Absent such finding, there is no support for plaintiff to include such an award in his proposed Order.

Pratt-Thomas respectfully requests that the Court sustain their objection to the proposed Order and require that any reference to an award of fees, expenses, and costs be removed.

DATED this 18th day of August, 2009.

STRONG & HANNI

By Stuart H. Schultz

Stuart H. Schultz

Byron G. Martin

Attorneys for Defendants Clayton B.

McCullough and Pratt-Thomas

Walker, P.A.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2009, a true and correct copy of the foregoing **Objection to Proposed Order on Motion to Remand, et al.** was served by the method indicated below, to the following:

David W. Scofield	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Thomas William Peters	<input type="checkbox"/>	Hand Delivered
PETERS SCOFIELD	<input type="checkbox"/>	Overnight Mail
115 Parleys Corporate Center	<input type="checkbox"/>	Facsimile
2455 Parleys Way	<input checked="" type="checkbox"/>	CM/ECF System
Salt Lake City, UT 84109		

John R. Lund	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
P. Matthew Cox	<input type="checkbox"/>	Hand Delivered
SNOW, CHRISTENSEN & MARTINEAU	<input type="checkbox"/>	Overnight Mail
10 Exchange Place, 11th Floor	<input type="checkbox"/>	Facsimile
Salt Lake City, UT 84145-5000	<input checked="" type="checkbox"/>	CM/ECF System

Douglas L. Stowell	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
Adam L. Crayk	<input type="checkbox"/>	Hand Delivered
STOWELL & CRAYK, PLLC	<input type="checkbox"/>	Overnight Mail
525 South 300 East, Suite 200	<input type="checkbox"/>	Facsimile
Salt Lake City, UT 84111	<input checked="" type="checkbox"/>	CM/ECF System

David R. Hall	<input type="checkbox"/>	U.S. Mail, Postage Prepaid
John P. Ball, Jr.	<input type="checkbox"/>	Hand Delivered
PARSONS BEHLE & LATIMER	<input type="checkbox"/>	Overnight Mail
One Utah Center	<input type="checkbox"/>	Facsimile
201 South Main Street	<input checked="" type="checkbox"/>	CM/ECF System
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Stephen A. Bryant	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
108 Forest View	<input type="checkbox"/>	Hand Delivered
Peachtree City, GA 30269	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	CM/ECF System

Kendall Bryant
108 Forest View
Peachtree City, GA 30269

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ CM/ECF System

A handwritten signature in blue ink, reading "Lilli Nappiger", is written over a horizontal line.

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